

## **REMARKS**

Applicant wishes to thank the Examiner for the consideration given this case to date. Applicant has now had an opportunity to carefully consider the Examiner's action, and respectfully submits that the application, as amended, is now in condition for allowance. As filed, claims 1-15 were pending. While the Office only considered claims 1-12, Applicant believes that claims 1-15 were properly presented and remain pending.

## **THE EXAMINER'S ACTION**

In the Office Action dated December 22, 2003, the Examiner:

rejected claims 1-7, 9-12 under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 6,226,906 to Bar-Yona in view of U.S. DES 421,722 (Chang); and

rejected claim 8 under 35 U.S.C. § 103(a) as being unpatentable over Bar-Yona and Chang, and in further view of U.S. Patent No. 5,995,455 to Kutosky.

## **REJECTIONS UNDER 35 U.S.C. § 103(a)**

Claims 1-7, and 9-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,226,906 to Bar-Yona (Bar-Yona) in view of U.S. Des. 421,744 to Chang (Chang). Because there is no suggestion or motivation to make the combination as attempted by the Office, and because the proposed modification would render the prior art unsatisfactory for its intended purpose, Applicant requests reconsideration and withdrawal of the present rejection.

The Office concedes that the Bar-Yona reference fails to teach the shaped base portion as called for in claim 1. The Office proposes combining the teachings of Chang to remedy this shortcoming. However, the Bar-Yona reference utterly fails to disclose any device amenable to oscillation upon external urging, a rocking frame, or a non-powered rocking base. Indeed, Applicant was unable to discern any teaching in Bar-Yona of a non-powered lenticular lens display. Applicant respectfully directs the Office's attention to Bar-Yona Reference Numeral 14 (electrically powered drive means), and 34 (electronic oscillator powered by battery).

Similarly, even assuming that Chang discloses the shaped base portion as claimed (which it manifestly does not – claim 1, for example, calls for the shaped base portion to support the

image and the information display). There is simply no motivation to make the combination as suggested by the Office.

Additionally, the combination proposed by the Office is improper as it would render the Bar-Yona reference unsatisfactory for its intended purpose (MPEP 2143.01). In order for the lenticular display disclosed by Bar-Yona to meet its intended purpose, the image card behind the lenticular display is mechanically moved between two positions. The image viewed through the lenticular lens thus changes depending on the position of the mechanically moved card. If the teachings of Chang were to be combined with Bar-Yona, the viewed image would appear to change based on both the mechanical movement and the rocking movement. Thus, the viewed image would change erratically or, in some circumstances, not at all, due to the combined movements.

Regarding claims 6, 7, 10, and 11, the Office has taken official notice that the concept and advantage of weight distribution is well known. Applicant notes initially that it is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record, as the principal evidence upon which a rejection is based. (MPEP 2144.03 citing *Zurco*, 258 Fed.3d. 1379, 1385, 59 U.S.P.Q. 2d. 1693, 1697 (Fed. Cir. 2001). Accordingly, Applicant traverses the rejection based on official notice and requests documentary evidence should the rejection be maintained. Specifically, Applicant traverses that official notice can support the rejection by referring to the references cited by the Office. In the references cited, the weighted portions are not consistently placed and appear to most predominantly favor moving weight lower. See, for example, U.S. Patent 5,169,354 col. 1, ln. 50 “the eccentric weight of the bell to rotate to the lowest available position relative to the support surface”; U.S. Patent 4,912,586 col. 2, ln. 49-55 “a center mass spaced from the longitudinal axis”; and “lead weights positioned on the interior surface of the lower portion of the shelf”; and U.S. Patent 6,165,041 col. 2, lns. 10-12 “the seat is provided toward an inner bottom center with a fixedly connected weight”.

Thus, because there is no suggestion in the references of record to make the combination proposed by the Office, and because the combination would render the prior art unsatisfactory for its intended purpose, and because official notice is traversed, Applicant requests reconsideration and withdrawal of the rejection of claims 1-7, and 9-12 under 35 U.S.C. § 103(a).

To establish a prima facie obviousness rejection, all claim limitations must be taught or suggested by the prior art (MPEP 2143.03 citing *In re Royka*, 490 F.2d. 981, 180 U.S.P.Q. 580 (CCPA 1974)). The Office has rejected claim 8 asserting U.S. Patent 5,995,455 to Kutosky (Kutosky) teaches an alarm settable to sound at a determined time and immediately upon user interaction. Applicant was unable to discover any teaching in Kutosky of an alarm that would sound immediately upon user interaction. The Office referred to Figure 3 and specifically indicated an on/off switch, Reference Numeral 80. Contrary to the Office's assertion, Reference Numeral 80 supplies but one condition necessary for the alarm to sound. The second condition is that the display reach the "primary alarm time" as discussed in col. 5, lns. 34-40. In other words, toggling on/off switch 80 enables the alarm to sound at a determined time, but does not result in the alarm sounding immediately.

Because the references do not teach all claim limitations, reconsideration and withdrawal of this rejection is requested.

### **UNREJECTED CLAIMS**

Applicant notes that the Office did not consider or reject claims 13-15 as originally filed. Applicant believes these claims include patentable subject matter over the references of record. As such, an indication of their allowance is sought.

### **PROCEDURAL MATTERS**

As filed, the application included an Information Disclosure Statement consisting of two sheets. While the Examiner appears to have considered sheet number 1 listing several patents, Applicant could not find evidence that the Office considered the references provided on sheet 2. For the convenience of the Examiner, Applicant provides here a copy of the Information Disclosure Statement as filed with copies of the references originally disclosed on sheet 2.

Additionally, Applicant requests an indication that the formal drawings filed on May 28, 2002 have been received and are acceptable.

### **CONCLUSION**

For the foregoing reasons, Applicant respectfully asserts that the case is now in a condition for allowance. While no additional fees are believed due, the Commissioner is hereby authorized to charge any additional fees or credit any overpayments to Deposit Account No. 02-2051, identifying our Docket No. 24637-5.

Respectfully submitted,

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